

REMARKS

Claim 1 has been amended by incorporating the subject matter of claim 4 into it. Accordingly, claim 4 has been canceled.

Claims 2 and 3 have also been canceled.

Claims 1 and 5-24 are currently pending, although claims 21-24 have been withdrawn from consideration. Upon indication of allowable subject matter, Applicants intend to seek rejoinder of the withdrawn claims as appropriate, particularly claims 21-23 which ultimately depend from claim 1. (See, MPEP 821.04).

The Office Action rejected claims 1, 6-18 and 20 under 35 U.S.C. § 103 as obvious over WO 02/03952 ("Robinson"), claims 4 and 5 under 35 U.S.C. § 103 as obvious over Robinson in view of U.S. patent application publication no. 20010002257/French patent application no. 2,771,632 ("Stoltz"), and claims 1 and 4-20 under 35 U.S.C. § 103 as obvious over EP 1,055,406/U.S. patent 6,465,402 ("Lorant") in view of U.S. patent 6,346,255 ("Fontinos"). In view of the following comments, Applicants respectfully request reconsideration and withdrawal of these rejections.

Robinson neither teaches nor suggests the presence of the required lipophilic glycines. The Office Action recognized this fatal deficiency of Robinson's disclosure: claim 4 was not rejected over Robinson. (See, Office Action at page 4). Applicants respectfully submit that the rejection based solely upon Robinson has been rendered moot by the incorporation of the subject matter of claim 4 into claim 1, and respectfully request reconsideration and withdrawal of this rejection.

Regarding the two remaining rejections, the combination of references relied upon by the Office Action neither teaches nor suggests the claimed invention.

The Office Action recognized that Lorant, like Robinson, neither teaches nor suggests the claimed lipophilic glycines (See, Office Action at page 9), meaning that Lorant cannot teach or suggest the claimed invention.

Thus, by themselves, neither of the primary references teaches or suggests the claimed invention.

The secondary references, Stoltz and Fontinos, do not compensate for Robinson's and Lorant's deficiencies. No motivation would have existed to combine these references with the primary references with the expectation that a stable, acceptable emulsion would result.

In maintaining the rejection based upon Robinson and Stoltz, the Office Action relied upon the assertion that the specification does not provide a definition of "lipophilic" and, thus, the claims are not limited to an amino acid linked to a fatty acid. (See, Office Action at page 4). However, this assertion has been rendered moot by the above amendment to claim 1 requiring R to be selected from the group consisting of alkyl and alkenyl radicals containing from 6 to 22 carbon atoms and R' to be hydrogen or an alkyl group containing up to 30 carbon atoms. Thus, the claims as amended require the presence of a lipophilic R group, as well as possibly the presence of a lipophilic R' group, something neither taught nor suggested by Robinson.

Moreover, the fact that Robinson states over the course of 20 pages (pages 41-60) that additional active agents can be added to his compositions does not teach or suggest the claimed invention either --- Robinson's disclosure is so broad and general that one skilled in the art would not have been motivated to add the required lipophilic glycine compounds to Robinson's compositions with a reasonable expectation that an acceptable composition would result (particularly given solubility issues), let alone to add the required glycine compounds

in an amount sufficient to stabilize an emulsion. For at least this reason no motivation would have existed to combine Robinson and Stoltz to yield the claimed invention.

In view of the above, Applicants respectfully request reconsideration and withdrawal of the rejection based upon Robinson and Stoltz.

Similarly, the combination of Lorant and Fontinos does not yield the claimed invention. Lorant is silent concerning the claimed glycine compounds. Fontinos relates to a patch or pad. Nothing in either of these references would lead one skilled in the art to add an emulsion stabilizing effective amount of the required glycine compound to Lorant's compositions. That is, given that Fontinos' patches or pads are so structurally different from Lorant's compositions, no teaching, suggestion or motivation would have existed to add an emulsion stabilizing effective amount of the claimed glycine compounds to Lorant's compositions with the expectation that a stable emulsion would result.

In view of the above, Applicants respectfully request reconsideration and withdrawal of the rejection based upon Lorant and Fontinos.

Finally, the Office Action asserted that the previously submitted Rule 132 declaration was unpersuasive because (1) it was directed to a single species; and (2) the comparative examples contained large globules and, thus, were still considered to be emulsions.

Regarding (1), Applicants respectfully submit that paragraph 10 of the declaration constitutes evidence that the unexpected/surprising results are not limited to a single species. See, MPEP 716.01(c)(III).

Regarding (2), Applicants respectfully submit that paragraphs 6-8 of the previously submitted declaration state that large globules are an indication of emulsion instability. Thus, the large globules present in the comparative compositions demonstrate that the comparative compositions are unstable.

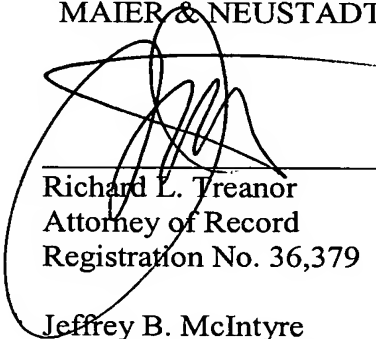
Accordingly, Applicants respectfully submit that the previously submitted declaration is sufficient to demonstrate the unexpected/surprising stability results associated with the claimed invention.

For all of the above reasons, Applicants respectfully request reconsideration and withdrawal of all pending rejections under 35 U.S.C. § 103.

Applicants believe that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

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